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09/766,930	01/23/2001	Alan Tura	01032	1240

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05/03/2004

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EXAMINER

CHANG, AUDREY Y

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/766,930

Applicant(s)

TURA, ALAN

Examiner

Audrey Y. Chang

Art Unit

2872

*aw*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Oath/Declaration*

1. The oath or declaration is **defective**. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration has reviewed and understands the contents of the specification, including the claims, as amended by any amendment specifically referred to in the oath or declaration.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. **Claim 8 is rejected under 35 U.S.C. 112, first paragraph**, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was **not** described in the specification in such a way as to **enable** one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification and the claim fail to teach how could a *polarized lens* function as a selective *color* viewing lens to provide viewer *color isolation* imparting image registration shift. A *polarized* lens generally **only** has polarization selectivity but not color selectivity.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. **Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “non-reactive base colors” and the phrase “reactive primary colors” recited in claim 1 and various dependent claims are confusing and indefinite since it is not clear what is considered to be the “*reaction*”. It is not clear *with respect to what* are these colors considered to be reactive or non-reactive.

The phrase “said composite graphic indicia registration”, the phrase “said compound graphic indicia registration” and the phrase “non-reactive and reactive primary colors” recited in claim 1 (also in claim 7) are confusing and indefinite since they *each* lacks proper antecedent basis from earlier part of the claims. These confusions and indefiniteness make the scopes of the claims unclear.

The phrase “said reactive base colors” recited in claim 3 is confusing and indefinite since it lacks proper antecedent basis from its based claim.

The phrase “reactive graphic indicia colors” recited in claim 4 is confusing and indefinite since it is not clear what is this phrase referred to. It is also not clear how could the **viewing portions** are capable of “impart[ing] angular inclination of reactive graphic indicia colors imparting a wrap around effect” as recited in claim 4. It is not clear exactly **what** imparts the angular inclination and the wrap around effect.

The phrase “primary non-reactive and specific reactive colors” recited in claim 5 is confusing and indefinite since it is not clear what are these colors referred to the colors defined in its based claim.

**Applicant is respectfully reminded to clarify ALL** of the errors, confusions and discrepancies of the claims to make the claims in comply with the requirements of 35 USC 112, first and second paragraphs.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the patent issues to Burton (PN. 6,608,718).**

**Burton** teaches a method and system for creating *three-dimensional visualization* of images wherein a set of specific *color and geometric patterns* are formed on a substantially *black background*. The black background serves as the *non-reactive base color*, which as taught by Burton can be the wall background of a room. The specific color and geometric patterns may include different color portions (10-14 in Figure 1 or 20-28 in Figure 2). Burton teaches the color portions may include *red, blue and green portions* (14, 10 or 28, 20, 22), which are of *primary colors* and *yellow portions and orange portions*, wherein the colored portions can be overlapped with each other and be formed on the black background, as indicated in Figures 1-3. Burton teaches that by illuminating the color portions and the background with ultraviolet light and by viewing the color portions with *a pair of stereoscopic lenses* that *selectively* diffract light based on the *wavelength*, the different color portions, which together forms a *compound color pattern*, will appear to "float" in the space as against the black background at different spatial positions, (please see Figure 2A). That is to say the compound color pattern with different color portions appear in *dimensional relationship* with respect to the black background and with respect to each other, which therefore creates depth or stereoscopic illusion to the viewer, (please see columns 3-4). This reference has met all the limitations of the claims with the exception that it does not teach explicitly that the black background and the color portions are applied on a *curvilinear* surface. However Burton teaches explicitly that the optical three-dimensional effect is the result of having different colored objects or portions being positioned on a black background so that when illuminating the colored objects or portions with ultraviolet light the viewer will see the colored objects or portions free-floating against the

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black background when viewed through the stereoscopic lenses, (please see column 3). It is implicitly true that the optical three-dimensional effect does not rely on the *geometric* shape of the background surface but on the black color nature of the background surface. It would then have been obvious to one skilled in the art to apply the same method to use a curved background surface for the benefit of allowing the three-dimensional image method being applied to a curved background surface as desired.

Furthermore, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Madham*, 2 USPQ2d 1647 (1987).

This reference also does not teach *explicitly* that the black background and each different color portion or geometric pattern is a graphic design indicia. However Burton does teach that the colored portions or patterns may assume different geometric shapes and may even be portions of a figures, (please see Figures 1-4). As mentioned in the paragraphs above, the critical factor to achieve the optical three-dimensional effect is to have different *colored* portions applied on a black background and viewed through stereoscopic lenses, i.e. to create *color contrast*. The nature of the colored portions to be graphical or to assume any geometric shapes become an issue of obvious matters of design choices to one skilled in the art for the benefit of creating three-dimensional images of personal preference.

With regard to claim 3, Burton teaches that the primary colors include red, blue and green colors.

With regard to claims 4 and 5, Burton teaches that the color portions or patterns may appear to have staircase relationship, which in some sense creates an angular inclination. In a different embodiment, Burton teaches that the different color regions are formed on a three dimensional objects with different color layers which will introduce even more angular inclination when viewed by the observer due to the geometric shape of the object, (please see Figure 3).

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With regard to claim 6, Burton teaches that the colored portions or objects with *fluorescent* color, such as fluorescent red color will make the three-dimensional effect even more sharply contrast against the black background, (please see column 3, lines 40-51, and column 4, lines 1-32).

With regard to claim 8, Burton teaches the stereoscopic lenses may include prisms, (please see column 1, lines 24-26).

8. **Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the patent issued to Burton as applied to claim 1 above, and further in view of the patent issued to Kawai et al (PN. 6,224,964).**

The method for creating optical three-dimensional image taught by **Burton** as described for claim 1 above has met all the limitations of the claims with the exception that it does not teach explicitly that the color portions are applied by monolithic design transfer sheets of pre-printed multiple color registration. However using monolithic design transfer sheet with pre-printed multiple color registration to create colored pattern is very well known in the art as demonstrated by the teachings of **Kawai et al**. **Kawai** teaches that a monolithic thermal transfer sheet of multiple color registrations (1, Figure 1) is used to transfer color pattern onto a substrate. It would then have been obvious to apply the teachings of **Kawai et al** to use the standard monolithic transfer sheet to form the colored patterns of **Burton** for the benefit of making the colored patterns with single application process, to save time and cost.

### ***Double Patenting***

9. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

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A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

10. **Claims 1-8 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-8 of copending Application No. 10/072,328. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.**

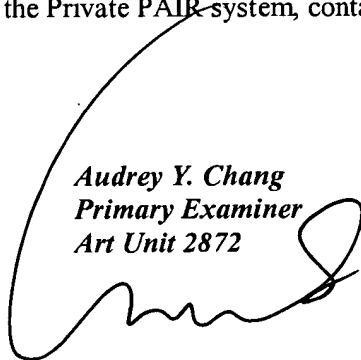
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Audrey Y. Chang whose telephone number is 571-272-2309. The examiner can normally be reached on Monday-Friday (8:00-4:30), alternative Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on 571-272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Audrey Y. Chang  
Primary Examiner  
Art Unit 2872**



A. Chang, Ph.D.